IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.18848 of 2003 and Writ Petition No. 19559 of 2003

E. Kesavalu .. Petitioner in
both W.Ps.

-Vs-

The Senior Divisional Manager
IBP Company Ltd.
No.10, Mayor VR Ramanathan Road
Chetpet, Chennai 600 031.

The Collector
Tiruvallur District .. Respondents in
Tiruvallur. W.P.No.18848/03

The District Collector
Tiruvallur District
Tiruvallur.

The District Revenue Officer
Tiruvallur District
Tiruvallur.

The Tahsildar
Ambattur Taluk
Ambattur, Tiruvallur District.

The Assistant Engineer (O&M)
Tamilnadu Electricity Board Respondents in
Puzhal, Chennai 66. .. W.P.No.19559/03

Petitions under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V. Dhanapalan

^For Respondent-1
in W.P.No.18848/03 : Mr.K. Kumar, ACGSC

For Respondent-2

in W.P.No.18848/03 &

For Respondents 1-3 : Mr.M.S. Palanisamy, AGP

:O R D E R

The petitioner is running a petrol bunk in the name and style of Shanthi Services Station at Door No.111, GNT Road, Puzhal, Chennai 600 0 66, located in Survey No.459/1A, Puzhal Village, Ambattur Taluk, Tiruvallur District, pursuant to a dealership in petroleum products retail outlet under the Indo Burma Petroleum Company, shortly known as IBP Company Ltd., the first respondent in W.P.No.18848 of 2003 (hereinafter referred to as the 'petroleum company').

2.1. Even though it is contended on behalf of the petitioner that an extent of 50 cents in Survey No.458/1A, Puzhal Village, Ambattur Taluk, Tiruvallur District, was originally allotted to the petitioner by the Government on lease in G.O.Ms.No.3169, Revenue Department dated 15.12.1981 for a period of six years, subject to the review by the Government once in three years, it is not in dispute that the said lands was not reviewed or renewed after the expiry of the original lease.

2.2. But, the petitioner continues to operate the petrol bunk without a valid renewal of lease by the Government, as the petroleum company continues to supply petrol all these years. However, the Government treating the petitioner as unauthorised occupant, as there was no proper and valid renewal or extension of lease granted under G.O.Ms. No.3169, Revenue Department dated 15.12.1981, initiated proceedings to evict the petitioner from the said land, as the same is required for housing the Central Prison at Puzhal Village as per G.O.Ms.No.440/ Home (B.R.IV) Department dated 27.5.2002, over an extent of 58.47 hectares, equivalent to 144.42 acres with the aid of the World Bank, with the provision for hospitals, libraries, criminal Courts etc.

2.3. The petitioner, during the past 20 years have also encroached one acre of land around Survey Nos.458, 459/1A of Puzhal Village and thus, he is in unauthorised occupation of total of 1.48 acres.

2.4. Since the petroleum company, realising the urgency to evict the petitioner, stopped supplying petroleum products to the petitioner. Aggrieved by the same, the petitioner filed W.P.No.18848 of 2003 for issue of writ of Certiorarified Mandamus to call for the the records relating to the impugned order issued in Ref.No.CD.MDS/11 dated 3.7.2003 passed by the first respondent and quash the same as arbitrary, unreasonable, improper, illegal, against the rules and regulations of the respondents violating the principles of natural justice and fundamental rights guaranteed under the Constitution of India and thereby directing the first respondent to restore the supply of all petroleum products to his service station and also obtained an order of interim stay, by order dated 8.7.2003 in WPMP No.23570 of 2003.

2.5. As the lands encroached by the petitioner is located within the project area of the proposed Central Prison, the respondents were required to evict the petitioner under the Land Encroachment Act and thus have issued a notice under Section 6 of the Act. Aggrieved by the notice issued under Section 6 of the Act, the petitioner moved this Court in W.P.No.19559 of 2003 seeking a writ of Certiorarified Mandamus to call for the records relating to the notice issued under Section 6 of the Tamilnadu Land Encroachment Act 1905 along with consequential summary eviction order issued in Na.Ka.9230/2002/C1 dated 30.6.20 03 passed by the third respondent in respect of his land in Survey No.459/1A, Puzhal Village, Ambattur Taluk, Tiruvallur District, having his Shanthi Service Station, situate in Door No.111, GNT Road, Puzhal, Chennai 600 066, and quash the same as arbitrary, unreasonable, improper, illegal, ultravires, against the rules and principles of natural justice and violating the constitutional guaranties and thereby directing the respondent herein to assign or renew the lease of the abovesaid land granted in G.O.Ms.No.3169 dated 15.10.1981 in his favour.

3.1. Objecting to the above interim order dated 8.7.2003 made in WPMP No.23570 of 2003 in W.P.No.18848 of 2003, the State Government filed a detailed counter dated 28.7.2003.

3.2. According to the learned Additional Government Pleader, the State Government proposed to lay foundation stone on 15.9.2003. Hence, both the writ petition as well as WPMPs are taken up for hearing.

4. The core contention of the learned counsel for the petitioner is that the respondents have not served any notice under Section 7 of the Act, before issuing the impugned notice under Section 6 of the Act.

5. The above contention is strongly objected to by the learned Additional Government Pleader, who submits that when the respondents served notice under Section 7 of the Act, the petitioner refused to receive the same and therefore, the authorities were constrained to complete the service by affixture. The relevant file was also produced before this Court wherein the Village Administrative Officer concerned has made an endorsement to the effect that the petitioner as well as other inhabitants who were already evicted initially refused to receive notice under Section 7 of the Act.

6. If that be so, I do not find any substance in the contention of the learned counsel for the petitioner. That apart, even though all the encroachers/inhabitants were already removed, the authorities could not evict the petitioner in view of the order of this Court dated 8 .7.2003 in WPMP No.23570 of 2003.

7. Mr.K. Kumar, learned Additional Central Government Standing Counsel, appearing for the petroleum Company makes it clear that the petroleum company is not interested to supply petrol any more, taking into consideration the need of the land to house the Central Prison at Puzhal. It is also stated that but for the orders of this Court dated 8.7.2003, the petroleum company

would have stopped the supply of petrol long back.

8. Therefore, looking at every angle, I am satisfied that the public interest, viz. to house the Central Prison in an extent of 144.42 acres, which is getting delayed in view of the order of stay of this Court dated 8.7.2003 in WPMP No.23570 of 2003, prevails over the grievance of the petitioner, which is purely centered on private interest, viz. to continue his business in petroleum products retail outlet. Hence, it may not be proper to delay the implementation of the Scheme any further, particularly, when the Government comes forward to take care of the interest of the petitioner to provide an alternative site in an around the area, of course, subject to the feasibility and availability of the same and the petroleum company is also willing to permit the petitioner to shift the petroleum bunk, subject to the other regulations of the Company.

9. In the circumstances, except to permit the petitioner to vacate the premises on or before 31.8.2003, as undertaken by him by making an endorsement before this Court in the above writ petitions and to permit him to make a representation, giving details of five alternative sites, to the Collector to allot a suitable site to him in and around the area, either for outright purchase or for lease, subject to the no objection certificate by the petroleum company to shift his petrol bunk, and on receipt of such representation, the Government shall pass appropriate orders within two weeks from the date of receipt of such representation by the petitioner, no further order is required in these writ petitions.

The writ petitions are ordered accordingly. No costs. WPMP Nos.2357 0 and 24416 of 2003 are closed.

Index : No
Internet : Yes

kpl

To

1. The District Collector
Tiruvallur District
Tiruvallur.

2. The District Revenue Officer
Tiruvallur District
Tiruvallur.

3. The Tahsildar
Ambattur Taluk
Ambattur, Tiruvallur District.

4. The Assistant Engineer (O&M)

Tamilnadu Electricity Board
Puzhal, Chennai 66.

5. The Senior Divisional Manager
IBP Company Ltd.
No.10, Mayor VR Ramanathan Road
Chetpet, Chennai 600 031.